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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/908,852	08/08/97	ROE	D 5494CR

EXAMINER	
RUHL, D	
ART UNIT	**PAPER NUMBER**
3761	24

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0M12/1226

DATE MAILED: 12/26/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/908,852	Roe et al.
Examiner	**Group Art Unit**
Dennis Ruhl	3761

☒ Responsive to communication(s) filed on *Sep 20, 2000* .

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-26* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-26* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. The request filed on 9-20-00 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/908852 is acceptable and a CPA has been established. An action on the CPA follows.

2. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1,13, there is no antecedent basis for "the interior", and "the wearer". The term "effective amount" is considered indefinite because the result that the effective amount is to accomplish is not defined or stated.

. With respect to claims 3-7,15-17, it is not clear what is meant by "open area". How is this term calculated? The claim does not define (it is not clear) what is meant by "open area". Additionally even upon consulting the instant specification for a meaning of "open area" the examiner notes that this term is based upon a measurement of the "crotch" region of an article. This is another reason the term is considered indefinite. There is no guidance or way to determine what the crotch region is and what it is not. What is the scope of the term "crotch region"? A person wishing to avoid infringement of these claims would need to know what the scope of "crotch region" was. These claims will be examined as they are best understood by the examiner.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7,9-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Duncan et al. (3489148).

With respect to claims 1,3-7,9-11,13,15-20, Duncan discloses a topsheet 12, absorbent 11, and backsheet 11a. Duncan discloses that the topsheet has multiple discrete droplets of a lotion composition 14a. This is a pattern as the location of the droplets varies. The disclosure found in column 2, lines 7-9 indicates that the use of a hydrophilic topsheet was known in the public domain as of 1-13-1970. Even though Duncan is mainly concerned with a hydrophobic topsheet this portion of the disclosure teaches that it is known to use lotion on a hydrophilic topsheet.

With respect to claims 2,14, between distinct droplets there is no lotion.

With respect to claims 12,13, the immobilizing agent is considered to be the viscosity additive disclosed in column 2, lines 20-44.

With respect to claim 21, see column 3, lines 40-44.

With respect to claim 22, stearic acid is a C(14)-C(22) fatty acid; therefore, Duncan anticipates this claim.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-7,9-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duncan et al. (3489148) in view of Buchalter (3896807).

Duncan discloses a topsheet 12, absorbent 11, and backsheet 11a. Duncan discloses that the topsheet has multiple discrete droplets of a lotion composition 14a. This is a pattern as the location of the droplets varies. The disclosure found in column 2, lines 7-9 indicates that the use of a hydrophilic topsheet was known in the public domain as of 1-13-1970. Even though Duncan is mainly concerned with a hydrophobic topsheet this portion of the disclosure teaches that it is known to use lotion on a hydrophilic topsheet. Duncan does not disclose the use of the specific lotions claimed.

Buchalter discloses an oil phase impregnant in the form of a non-oily solid that forms a cream upon the application of perspiration and heat that is used on articles such as facial masks, sanitary napkins, diapers, etc., where the cream is applied to the skin of a person. The wearer's

skin will produce sufficient moisture and heat to cause emulsification of a portion of the oil phase. The substance is a dry non-oil, non-greasy, solid at room temperature and it is essentially free from water. The formulation is made from about 1% to about 99% and preferably from about 30% to about 70% of an oily material which includes mineral oil and petrolatum, and from about 99% to about 1% and preferably from about 30% to about 70% of an immobilizing agent. The resulting preparation can be applied to the article in a liquid phase and cooled to form a solid oil phase. The oil phase may additionally include, but are not limited to paraffin, vegetable oils, animal oils, and isopropyl palmitate. The oil phase is in the form of a dry, non-oily, non-sticky solid at room temperature, and comprises an oily material and one or more emulsifying agents and may include in addition, one or more emollients. The immobilizing agent or emulsifying agent includes cetyl alcohol, long chain fatty acid partial esters of a hexitol anhydride wherein the fatty acid has at least 6, preferably from 12 to 18 carbon atoms including the long chain fatty acid partial esters of sorbitan, sorbide, mannitan, and mannide and mixtures thereof. The emulsifying agent is considered to be the same as applicant's immobilizing agent.

It would have been obvious to one of ordinary skill in the art at the time the invention was to use the skin care composition of Buchalter on the diaper of Duncan (as disclosed by Duncan) so that the benefits of the skin care composition of Buchalter can be obtained on the article of Duncan.

7. Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is (703) 308-2262.

DENNIS RUHL
PRIMARY EXAMINER
December 18, 2000